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11
12 UNITED STATES DISTRICT COURT
13
14 DISTRICT OF NEVADA

15 MANUEL LOPEZ, MANUEL LOPEZ,
16 JR., LORENZO PADILLA, LORENZO
17 PADILLA, JR. ISRAEL GARCIA, and
18 IGNACIO GARCIA, individually and on
behalf of other persons similarly situated,

19 Plaintiffs,

20 vs.

21 PETE KING NEVADA CORPORATION,
22 a Nevada corporation, WILLIAM BRUCE
23 KING, as an individual, PULTE HOME
24 CORPORATION, a Michigan Corporation,
and DOES 1 through 10,

25 Defendants.

26 Case No. 2:06-cv-01200- RCJ-LRL

27
28 **ORDER GRANTING PULTE
HOME CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

Currently before this Court is Pulte Home Corporation's (hereinafter "Pulte Home") Motion for Summary Judgment and Request for Order Dismissing Class Action Claims filed on December 21, 2008. (Doc. 60). Plaintiffs Manuel Lopez, Manuel Lopez, Jr., Lorenzo Padilla, Lorenzo Padilla, Jr., Israel Garcia and Ignacio Garcia (collectively "Plaintiffs") filed a timely opposition to the motion on January 8, 2008. (Doc. 61). On January 22, 2008, Pulte Home filed its Reply in Support of its Motion for Summary Judgment and Request for Order Dismissing Class Action Claims. (Doc. 63). This motion came before this Court for hearing on oral argument on March 3, 2008.

1 I. **FACTUAL BACKGROUND**

2 Plaintiffs filed their Complaint on September 26, 2006, wherein they allege Pete King
 3 Nevada Corporation and William Bruce King (collectively "Pete King") violated provisions of the
 4 Fair Labor Standards Act. Plaintiffs further allege that Pulte Home is also liable for unpaid overtime
 5 wage pursuant to Nev. Rev. Stat. 608.150. Plaintiffs also allege Federal Rule of Civil Procedure 23
 6 class action allegations against Pulte Home and Pete King.

7 II. **SUMMARY JUDGMENT STANDARD**

8 This Court will grant summary judgment where the pleadings, depositions, answers to
 9 interrogatories, and admissions on file, together with affidavits, demonstrate that there is no genuine
 10 issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
 11 *See FED. R. CIV. P. 56(c); see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving
 12 party bears the initial burden of showing the absence of a genuine issue of material fact. *See*
 13 *Celotex*, 477 U.S. at 323. Summary judgment shall be entered "against a party who fails to make a
 14 showing sufficient to establish the existence of an element essential to that party's case, and on
 15 which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

16 III. **ANALYSIS**

17 For the reasons set forth below, this Court finds that Plaintiffs Manuel Lopez, Manuel Lopez,
 18 Jr., Lorenzo Padilla, Lorenzo Padilla, Jr., Israel Garcia and Ignacio Garcia have failed to set forth
 19 sufficient evidence to create a triable issue of material fact as to their individual claims for relief
 20 pursuant to Nev. Rev. Stat. 608.150. Further, this Court finds that Plaintiffs have failed to produce
 21 sufficient evidence to support their Federal Rule of Civil Procedure 23 class action allegations
 22 against Pulte Home or Pete King.

23 A. **Federal Rule of Civil Procedure 23 Class Action Allegations**

24 Plaintiffs concede that they will be unable set forth facts sufficient to support their Fed. R.
 25 Civ. P. 23 class action allegations against Pulte Home or Pete King. (Doc. 61). Accordingly, this
 26 Court grants Pulte Home's request for an Order dismissing all Federal Rule of Civil Procedure 23
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 28 ///

1 class action allegations. Further, on October 22, 2007, this Court denied Plaintiffs' motion for Fair
 2 Labor Standards Act Conditional Collective Action Certification and Court Supervised Notice of
 3 Pending Collective action in respect to Plaintiffs' request to name Pulte Home in the notice. (Doc.
 4 58). Consequently, this Court finds Plaintiffs only allegation against Pulte Home is under its Fifth
 5 Cause of Action, pursuant to Nevada Revised Statute 608.150. The only parties to the Fifth Cause of
 6 Action are Pulte Home and the five named Plaintiffs. Thus, this Court finds that since Plaintiffs
 7 Rule 23 class allegations are dismissed, in their entirety, with prejudice, the opt-in plaintiffs may not
 8 assert their claims against Pulte Home in this action.

9 B. Plaintiffs Individual Claims Against Pulte Home Pursuant to Nev. Rev. Stat.

10 608.150

11 1. Manuel Lopez Zarate

12 Plaintiffs concede that Manuel Lopez Zarate failed to produce any evidence to demonstrate
 13 that he has ever worked on one Pulte Home construction project during his tenure at Pete King.
 14 (Doc. 61). Accordingly, this Court finds Mr. Lopez Zarate could not have possibly accrued
 15 overtime wages while completing work on a Pulte Home construction project. Manuel Lopez
 16 Zarate's individual claim against Pulte Home pursuant to Nev. Rev. Stat. 608.150 is dismissed in its
 17 entirety, with prejudice.

18 2. Ignacio Garcia, Lorenzo Padilla and Juan Manuel Lopez Ojeda

19 Mr. Garcia and Mr. Padilla testified at deposition that they do not know whether they have
 20 ever worked on a Pulte Home construction project. (Doc. 61) Similarly, although Mr. Lopez Ojeda
 21 believes he has worked on a Pulte Home project, he does not know when, where or how long he
 22 worked. Plaintiffs argue that their inability to recall whether they worked on a Pulte Home Project
 23 or the name or location of such project is not fatal to their claim. Plaintiffs argue that the trier-of-fact
 24 can infer liability on Pulte Home because Plaintiffs testified that they often worked overtime hours
 25 for Pete King. This Court rejects Plaintiffs assertion. The issue before the Court on this Motion is
 26 whether there is sufficient evidence to create a triable issue of fact as to whether they worked
 27 overtime hours while employed on a Pulte Home Project for which they have not been paid. After
 28 18 months of discovery, Plaintiffs failed to produce any evidence to support claims that Mr. Garcia,

1 Mr. Padilla and Mr. Lopez Ojeda have ever worked overtime hours on a Pulte Home construction
 2 project. Accordingly, Plaintiffs have failed to establish a *prima facie* case and have failed to show
 3 that there is a genuine issue for trial. The Court grants Pulte Home's motion for summary judgment
 4 as to these Plaintiffs and Mr. Garcia's, Mr. Padilla's and Mr. Lopez Ojeda's individual claims,
 5 pursuant to 608.150, are dismissed in their entirety, with prejudice.

6 3. **Israel Garcia Jimenez**

7 Mr. Garcia Jimenez's testified at his deposition that he only worked on a Pulte Home
 8 construction project for two or three days. Mr. Jimenez, however, did not testify and has offered no
 9 evidence demonstrating that while so employed he accrued overtime wages. As such, this Court
 10 finds summary judgment on Mr. Garcia Jimenez's individual claim against Pulte Home is
 11 appropriate and dismisses his claim pursuant to Nev. Rev. Stat. 608.150, in its entirety, with
 12 prejudice.

13 4. **Lorenzo Padilla Moreno**

14 Lorenzo Padilla Moreno testified at his deposition that he only worked on one Pulte Home
 15 project for five days, eight hours per day and that he was paid by the hour. In essence, Mr. Padilla
 16 Moreno's testimony is that he worked 40 hours on one Pulte Home Project. Mr. Padilla Moreno did
 17 not, however, testify nor present any evidence that any of his time working on the Pulte Home
 18 project was overtime for which he was not paid. Thus, Mr. Padilla Moreno does not have a viable
 19 overtime claim against Pulte Home pursuant to Nev. Rev. Stat. 608.150. Accordingly, this Court
 20 grants Pulte Home's motion for summary judgment and dismisses Mr. Padilla Moreno's claim for
 21 overtime wages against Pulte Home, in its entirety, with prejudice.

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 23 IV. **CONCLUSION**

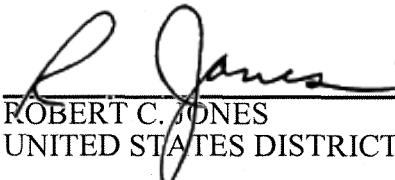
24 **IT IS THEREFORE HEREBY ORDERED THAT**, Defendant Pulte Home Corporation's
 25 Motion for Summary Judgment and Request For Order Dismissing Class Action Claim (Doc. 60) is
 26 **GRANTED** in its entirety and the entire action against Defendant Pulte Home Corporation is

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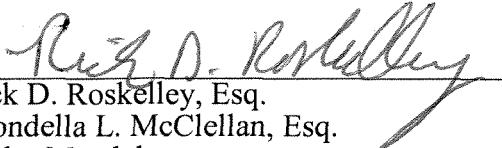
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1 dismissed, with prejudice, and with appropriate costs awarded in Defendant Pulte Home
2 Corporation's favor subject to approval of the clerk in a timely Bill of Costs.

3 Dated: April 9, 2008

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5 ROBERT C. JONES
6 UNITED STATES DISTRICT JUDGE
7

8 Respectfully submitted by:

9 
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PROOF OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169. On March 17, 2008, I served the within document(s):

**[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

- by serving the following parties electronically through CM/ECF:

by facsimile transmission at or about _____ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.

by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Las Vegas, Nevada addressed as set forth below.

by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.

by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

<p>J. Felix De La Torre Kristina L. Hillman Weinberg, Roger & Rosenfeld 428 J. Street, Suite 520 Sacramento, California 95914-2341</p> <p>Attorneys for Plaintiff</p>	<p>Joshua R. Woodard Snell & Wilmer, LLP One Arizona Center Phoenix, AZ 85004</p> <p>Attorneys for Pete King Nevada Corp. and William Bruce King</p>
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March
17, 2008, at Las Vegas, Nevada.

Maribel Rodriguez

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